



California Fair Political Practices Commission

November 14, 1989

Betsy Starbuck
Friends of Larry Walker
P.O. Box 968
Chino, CA 91708-0968

Re: Your Request for Advice
Our File No. A-89-423

Dear Ms. Starbuck:

You have requested advice on behalf of the Friends of Larry Walker committee regarding the campaign provisions of the Political Reform Act of 1974.¹

QUESTION

May assets purchased prior to January 1, 1989, but after June 8, 1988, be used to support Mr. Walker's candidacy after January 1, 1989?

During a series of telephone calls between September 25 and October 13, you also asked that our response to your question include instructions on how to complete campaign statements to show transfer of funds and assets from your old committee to the new one.

CONCLUSION

All assets held on January 1, 1989, by the Friends of Larry Walker committee, whether purchased before or after June 8, 1988, may be used by any other committee controlled by Larry Walker to support his candidacy to elective office, or for any other lawful purpose.

To report transfer of cash from one controlled committee to another, the committee making the transfer should report the transfer as an expenditure on Schedule E of Form 490. The committee receiving the transfer must show receipt of the funds as a miscellaneous increase to cash on Schedule G of Form 490. Cash equivalents transferred between committees are reported on both campaign statements for the two committees. On the Form 490 for the receiving committee, add the amount of cash equivalents transferred on Line 19 of the Summary Page of Form 490. On Line 19 of the Summary Page of the Form 490 for the committee making

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

the transfer, subtract the amount of cash equivalents transferred. Each statement should include a notice that a transfer of cash equivalents has occurred between the two committees.

The transfer of assets other than cash or cash equivalents among committees controlled by Larry Walker need not be disclosed on the campaign disclosure reports. These transfers are neither contributions nor increases to cash position.

FACTS

On June 8, 1988, Larry Walker had one committee, the Larry Walker Supervisor Committee. Believing at the time that any money held on June 8, 1988, could not be used to support Mr. Walker's candidacy after January 1, 1989, all funds held in the Larry Walker Supervisor Committee bank account were depleted. A new committee was formed on October 3, 1988, to support Mr. Walker's 1990 reelection bid. The Larry Walker Supervisor Committee was terminated on December 31, 1988. The assets of the terminated committee were retained by the new committee.

Having received information that assets held by the old committee that were purchased between June 8, 1988 and January 1, 1989, must be reviewed for determining whether they were purchased with funds received within the contribution limits established by Proposition 73, the new committee established another bank account into which it transferred an amount equal to the value of the assets.

In June 1989, you followed a procedure for bringing the funds transferred into the new account into compliance with Proposition 73. In July, some questions arose as to whether this procedure was proper.

ANALYSIS

Section 85306, as added by Proposition 73 in the June 1988 Primary Election, provides that:

Any person who possesses campaign funds on the effective date of this chapter may expend these funds for any lawful purpose other than to support or oppose a candidacy for elective office.

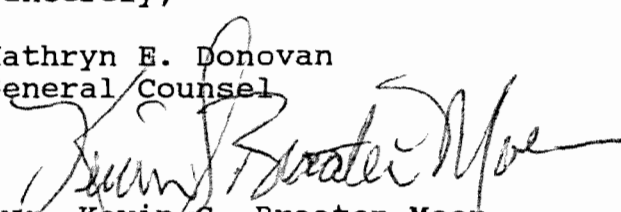
However, the United States District Court for the Eastern District of California has declared Section 85306 invalid. (Service Employees International Union, AFL-CIO, CLC, et al. v. Fair Political Practices Commission, No. CIVS 89-0433 LKK-JFM, September 14, 1989.) Therefore, campaign funds, including assets, received or purchased prior to January 1, 1989, may now be used to support a candidacy for elective office.

Betsy Starbuck
Page Three

If you have any additional questions, please contact me at
(916) 322-5662.

Sincerely,

Kathryn E. Donovan
General Counsel



By: Kevin S. Braaten-Moen
Political Reform Consultant

Larry Walker

County Supervisor

FPPC
JUL 18 1989
RECEIVED

July 14, 1989

Kevin Braaten-Moen
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804-0807

Dear Kevin,

This letter is sent in confirmation of our three conversations on July 6, 1989. Generally, our discussions centered on assets and the ability to carry them forward for use in future campaigns or the need to re-purchase them for use in future campaigns. You informed me that the action taken by the Friends of Larry Walker on June 29, 1989 was incorrect. As I explained on the sixth, I disagree with the reasoning behind the decision and I would appreciate your assistance in seeking a higher administrative or legal review. I am enclosing a copy of all pertinent previous correspondence regarding this matter, as well as the following explanation of actions taken.

On June 8, 1988, the date of passage of Proposition 73, San Bernardino County Supervisor Larry Walker had only one committee, the Larry Walker Supervisor Committee, ID # 851711. As you know, Proposition 73 caused considerable confusion for committees, as well as your office. Our review of the measure led us to interpret that the money on hand in the account could not be used after January 1, 1989. We took two actions: 1) we depleted the account and 2) we filed a Statement of Termination for the Larry Walker Supervisor Committee on December 31, 1988. Please reference my letter to Alice Hughes dated October 13, 1988 and her response to me dated November 15, 1988 (enclosed). Neither of our letters addresses the disposal of assets, nor does Section 84214, Regulation 18404, which she cited and enclosed with her letter.

On October 3, 1988, a new campaign committee was qualified and a Statement of Organization was filed within ten days to create the Friends of Larry Walker, ID # 882230. Although your forms 501 and 502 were not available at the time, we wrote to the FPPC a letter stating Supervisor Walker's intention to seek re-election in 1990. Subsequently, we express-mailed to you the pertinent information regarding the establishment of the campaign bank account. When the forms became available, we re-filed the same information.

In April, 1989, I happened to be talking with some other politically active folks in the area and the topic of Prop. 73 was discussed. I explained what we had done (as above). Someone asked about assets and I had to admit that I didn't know and hadn't thought about what was to be done with the assets. So I called Technical Assistance and spoke with you. Please reference my letter to you dated April 28, 1989. During May, we sought an independent evaluation of the assets to determine the fair market value. Also during May, the Friends of Larry Walker issued a check for \$1,000 to the "County Supervisor Larry Walker - Restricted Account" in order to get the account established and order checks. We knew the assets would exceed this amount. Upon receipt of the fair market evaluation, the committee wrote a check for the balance of the assets' value.

On June 2, 1989, I telephoned you to inquire about the results of the latest lawsuit, Service Employees International Union vs. FPPC. You stated you had just signed a letter to me which would explain the results, but you courteously took the time to explain the procedures for bringing the funds in the Restricted Account into compliance for transfer to the Campaign Account. Please reference your letter dated June 2, 1989 and my letter confirming our conversation dated June 26, 1989. On June 29, 1989, we followed the procedure as I set forth in my letter. As a result, a check was issued from the Restricted Account to the Campaign Account. Enclosed is a Documentation List which we prepared to explain our transfer of funds.

When it became apparent to you through our telephone conversation on July 6, 1989, that we had purchased the assets with money from the campaign account and then transferred money back to the campaign account using the outlined procedures, you informed me that you believed our action was incorrect. After checking with someone else in your office, you called me and confirmed that the action was incorrect. After reviewing the letters and other

documentation, I called you that afternoon to present an argument to your decision. You directed me to write this letter. As of this date, the money which had been transferred to the campaign account has been returned to the Restricted Account pending the response to this letter. We wanted to play it safe.

THE ARGUMENT:

1. There is no difference between assets and money. Assets are simply converted money.
2. The SEIU vs. FPPC case did not address the issue of assets. However, in addressing funds, the court ruled that "those funds that were raised prior to January 1, 1989 (emphasis added) in amount within the overall contribution limits contained in Proposition 73" may be carried over for future campaigns.
3. All assets were purchased with funds from the pre-Prop. 73 committee and were purchased or "raised" prior to January 1, 1989.
4. Use of the Proposition's date of passage, June 8, 1988, is irrelevant to determination of assets just as it was not relevant in the court's decision in SEIU vs. FPPC.

I argue that the Friends of Larry Walker should not be required to purchase the assets of the former campaign committee and should be allowed to carry them over for use in future campaigns. I suggest procedures similar to the ones used for carrying over funds could be employed for the carrying over of assets:

1. Determine the fair market value of the assets.
2. Review the (former) committee's records of contributions received. Start with the last contribution received and work backward to the total of the fair market value of the assets.
3. If the contribution was \$1,000 or less from a person or company, that portion of the assets is transferable to the campaign committee.
4. If the contribution was more than \$1,000, then a maximum of \$1,000 in assets could be transferred to the campaign committee.

5. The process continues until the total fair market valuation is reviewed.
6. Any amount of contributions in excess of the current contribution limitations would be deposited in the Restricted Account.

This process could be used in conjunction with the process for transfer of funds, although it is not applicable to our situation.

Should you grant a favorable decision, I request that the money which has been re-deposited to the Restricted Account pending your decision be transferred to the Friends of Larry Walker campaign account. Whether your decision agrees with my argument or not, I need your assistance in determining how to report the transfers of funds which have already taken place.

Should you have any questions or require more information, please call me at (714) 425-0111. If you desire, I would be available to meet with you and/or your colleagues in your offices to discuss this situation further. I eagerly await your decision.

Sincerely yours,

A handwritten signature in cursive script that reads "Betsy Starbuck".

BETSY STARBUCK

Enclosures

elect
**Larry
Walker**
county supervisor



October 13, 1988

Alice Hughes, Technical Assistance
Fair Political Practices Commission
POB 807
Sacramento CA 95804

Dear Ms. Hughes:

This letter is to confirm our conversation of Friday, October 7, 1988. I appreciate your time in researching the process by which the Larry Walker Supervisor Committee will terminate and the Friends of Larry Walker will begin.

In regard to the Larry Walker Supervisor Committee, it is my understanding that, although all funds probably will be expended by the end of October, you instructed me to file a Statement of Termination (Form 415), effective December 31, 1988, with the Secretary of State and a copy to the Registrar of Voters. Then, by January 31, 1989, a Semi-Annual Campaign Statement is to be filed for the period from July 1, 1988 through December 31, 1988.

The new committee, Friends of Larry Walker, will file a Statement of Organization (Recipient Committee, Form 410) within ten (10) days of receiving \$1,000 in contributions, with the original and one copy to the Secretary of State, and one copy to the Registrar of Voters. Then, by January 31, 1989, this committee will also file a Semi-Annual Campaign Statement for the period from July 1, 1988 through December 31, 1988, although it did not qualify as a committee until October 3, 1988.

If I misunderstood any part of our conversation, please let me know. Otherwise, I will follow your guidelines as instructed.

Sincerely yours,

Betsy Starbuck
BETSY STARBUCK

cc: James M. Garbo, Treasurer



Form 415
1988

STATEMENT OF TERMINATION

This form must be completed by Candidates, Officeholders
or Recipient Committees that wish to terminate
pursuant to Government Code Section 84214. **FPPC**

JUL 18 1989

(Type or Print in Ink)

RECEIVED

FILED
JUL 18 1989
JUL 18 1989
A OFFICIAL USE ONLY

COMMITTEE: (COMMITTEES FILE ORIGINAL AND ONE COPY OF THIS FORM WITH THE SECRETARY OF STATE AND, IF APPLICABLE, A COPY WITH THE LOCAL FILING OFFICER)

NAME OF COMMITTEE:						I.D. NUMBER	
LARRY WALKER SUPERVISOR COMMITTEE						851711	
ADDRESS OF COMMITTEE:		NO. AND STREET	CITY	STATE	ZIP CODE	AREA CODE	PHONE NUMBER
		5555 Locust Street	Chino	CA	91710	714-628-8000	
NAME OF TREASURER:							
James M. Garbo							
PERMANENT ADDRESS OF TREASURER:		NO. AND STREET	CITY	STATE	ZIP CODE	AREA CODE	BUSINESS PHONE NUMBER
		617 Cadenza Court	Ontario	CA	91761	714-622-1375	

VERIFICATION

I have used all reasonable diligence in preparing this statement. This committee has ceased to receive contributions and make expenditures, does not anticipate receiving contributions or repayments of outstanding loans made to others or any other receipts or making expenditures in the future, has eliminated or has declared that it has no intention or ability to discharge all debts, loans received and other obligations, has no surplus funds, and has filed all campaign statements required by the Political Reform Act disclosing all reportable transactions.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 12-31-88 at Chino, CA by James M. Garbo
(Date) (City and State) (Signature of Treasurer)

Executed on 881231 at Chino, CA by Larry Walker
(Date) (City and State) (Signature of Controlling Candidate, Officeholder or State Measure Proponent)

CANDIDATE OR OFFICEHOLDER: (CANDIDATES AND OFFICEHOLDERS FILE AN ORIGINAL OF THIS FORM WITH THE FILING OFFICER WITH WHOM THEY FILE THE ORIGINAL OF THEIR CAMPAIGN STATEMENTS.)

NAME OF CANDIDATE OR OFFICEHOLDER:						OFFICE SOUGHT OR HELD (INCLUDE LOCATION AND DISTRICT NUMBER IF APPLICABLE)	
LARRY WALKER						Co. Supervisor 4th District, San Bernardino	
RESIDENTIAL ADDRESS:		NO. AND STREET	CITY	STATE	ZIP CODE	AREA CODE	PHONE NUMBER
		5555 Locust Street	Chino	CA	91710	714-628-8000	
BUSINESS ADDRESS		NO. AND STREET	CITY	STATE	ZIP CODE	AREA CODE	PHONE NUMBER
		POB 968	Chino	CA	91708	714-628-8000	

VERIFICATION

I have used all reasonable diligence in preparing this statement. I have ceased to receive contributions and make expenditures, do not anticipate receiving contributions or repayments of outstanding loans made to others or any other receipts or making expenditures in the future, have eliminated or have declared that I have no intention or ability to discharge all debts, loans received and other obligations, have no surplus funds, and have filed all campaign statements required by the Political Reform Act disclosing all reportable transactions.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 881231 at Chino, CA by Larry Walker
(Date) (City and State) (Signature of Candidate or Officeholder)

NOTE: Additional filing obligations will be incurred if a candidate or committee begins raising or spending funds or receives the forgiveness of a loan or repayments of loans made to others or any other receipts.



**California
Fair Political
Practices Commission**

FFPC

JUL 18 1989

RECEIVED

November 15, 1988

Betsy Starbuck
P.O. Box 968
Chino, California 91708

Re: Your Request for Information
Our File No. A-88-401

Dear Ms. Starbuck:

You have requested advice on behalf of Larry Walker, San Bernardino County Supervisor, regarding his reporting requirements under the campaign disclosure provisions of the Political Reform Act (the "Act")^{1/}.

FACTS

Mr. Walker plans to terminate his current committee, Larry Walker Supervisor Committee, and organize a new committee, Friends of Larry Walker. The Larry Walker Supervisor Committee planned to deplete all funds during October 1988. Friends of Larry Walker qualified as a committee on October 3, 1988.

QUESTIONS

1. When is the statement of termination (Form 415) for the Larry Walker Supervisor Committee required to be filed?
2. When is the statement of organization (Form 410) for the Friends of Larry Walker committee required to be filed?
3. How should the committees file the semi-annual campaign statements due on January 31, 1989?

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

CONCLUSION

1. The statement of termination (Form 415) for the "old" committee may be filed at any time after the committee meets the criteria set out in Regulation 18404 (copy enclosed). The original and one copy must be sent to the Secretary of State and a copy to the San Bernardino County Registrar of Voters. The copy filed with the San Bernardino County Registrar of Voters must include a completed campaign statement (Form 490) covering the period from the closing date of your last campaign statement through the date of termination. On the cover page of the Form 490, Part III, Friends of Larry Walker and any other committee which Mr. Walker controls and which is not included in the report must be listed.

2. The statement of organization (Form 410) for the "new" committee must be filed within 10 days of receiving \$1,000 or more. The original and one copy of the statement of organization must be filed with the Secretary of State and a copy with the San Bernardino County Registrar of Voters.

3. The Friends of Larry Walker Committee must file a campaign disclosure statement (Form 490) no later than January 31, 1989. This campaign statement must cover the period from January 1, 1988 through December 31, 1988. The Larry Walker Supervisor Committee must be listed in Part III of the cover page of the statements.

ANALYSIS

Every committee must file a statement of organization (Form 410) within 10 days of receiving \$1,000 in contributions. (Section 84101.) Also, a recipient committee must file periodic campaign disclosure statements until it has filed a statement of termination (Form 415). (Section 84214; Regulation 18404.)

Regulation 18404 provides that a candidate, officeholder or recipient committee may terminate if it:

--Has ceased to receive contributions and make expenditures and does not anticipate receiving contributions or making expenditures in the future;

--Has eliminated or has declared that it has no intention or ability to discharge all of its debts, loans received and other obligations;

--Has no surplus funds; and

--Has filed all required campaign statements disclosing all reportable transactions.

Betsy Starbuck
Page Three
November 15, 1988

The original and one copy of the statement of organization and the statement of termination are required to be filed with the Secretary of State. In addition, a copy is required to be filed with the local filing officer. (Government Code Section 84101.)

Previously, we advised you that the Larry Walker Supervisor Committee should not terminate until after December 31, 1988, even though the committee has ceased to receive contributions and make expenditures. However, after further consideration, we conclude that the committee may terminate at any time as long as it meets the requirements for termination described above.

If you have any additional questions, please feel free to call me at (916) 322-5662.

Sincerely,

Diane M. Griffiths
General Counsel



By: Alice Hughes
Technical Assistance and
Analysis Division

AH:ssa
Enclosure

(Regulations of the Fair Political Practices Commission
Title 2, Division 6 of the California Administrative Code

18404. Termination of Candidate's and Committees' Filing
Requirements

(a) The filing obligations of a committee which qualifies pursuant to Government Code Section 82013(b) or (c) terminate at the end of the calendar year in which the committee qualified, except to the extent that additional campaign statements are required by Government Code Sections 84200, 84203, 84203.5 and 84204. If additional campaign statements are filed after the beginning of a new calendar year because the committee files a statement in connection with the qualification of a measure or a semiannual statement covering activity for the period July 1 through December 31, the committee's filing obligations terminate when such statements have been filed.

(b) A candidate may terminate his or her status as a candidate, and a treasurer of a committee which qualifies pursuant to Government Code Section 82013(a) may terminate the committee's status as a committee, only by filing a Statement of Termination declaring, under penalty of perjury, that the candidate or committee:

- (1) Has ceased to receive contributions and make expenditures and does not anticipate receiving contributions or making expenditures in the future;

(2) Has eliminated or has declared that it has no intention or ability to discharge all of its debts, loans received and other obligations;

(3) Has no surplus funds; and

(4) Has filed all required campaign statements disclosing all reportable transactions.

(c) A Statement of Termination filed pursuant to subsection (b) shall be filed as follows:

(1) In the case of a committee, the original with the Secretary of State, and a copy with each filing officer with whom a copy of the committee's last campaign statement was filed;

(2) In the case of a candidate, the original with the filing officer with whom the original of the candidate's last campaign statement was filed.

(d) A candidate or a committee which has terminated remains subject to all civil and criminal penalties and remedies for any violations of this title or any other provision of law.

(Gov. Code Section 84214)

History: (1) New section filed 3/31/77; effective 4/30/77.
(2) Amendment of (a) filed 5/22/78; effective 6/21/78.
(3) Amendment filed 2/17/82; effective 3/19/82.
(4) Amendment filed 3/3/86; effective 4/2/86.

FRIENDS OF LARRY WALKER
P.O. BOX 968
CHINO CA 91708-0968

April 28, 1989

Kevin Braaten-Moen
Fair Political Practices Commission
POB 807
Sacramento CA 95804

Dear Mr. Braaten-Moen:

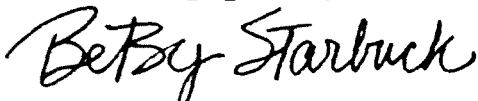
In response to our conversation of a few weeks ago, I understand now that in order for Supervisor Walker's new committee (Friends of Larry Walker, ID #882230) to use assets (office equipment, supplies, etc.) which had been purchased by his old committee (Larry Walker Supervisor Committee, ID #851711) in a campaign, the new committee must purchase the assets at fair market value.

When we receive the valuation, the Friends of Larry Walker will write a check to "County Supervisor Larry Walker - Restricted Account."

A Statement of Termination was filed for the Larry Walker Supervisor Committee on 12-31-88. Upon establishment of the Restricted Account, it is my understanding that since it is not a campaign account, a Statement of Organization does not need to be filed, no I.D. number is issued, no notification of location and account number is required, and only semi-annual Form 490R reports are required.

If I have misunderstood any aspect of establishing and maintaining a restricted account, please let me know. I appreciate your attention and efforts in this matter.

Sincerely yours,



BETSY STARBUCK

bc: Jim Garbo
Roger Melanson



California Fair Political Practices Commission

June 2, 1989

JUL 18 1989

RECEIVED

Betsy Starbuck
Friends of Larry Walker
P.O. Box 968
Chino, CA 91708-0968

Re: Your Request for Advice
Our File No. A-89-266

Dear Ms. Starbuck:

You have requested confirmation of telephone advice concerning the campaign provisions of the Political Reform Act of 1974.1/

You asked about use of campaign funds received and use of assets purchased prior to January 1, 1989.

My telephone advice was provided prior to the May 15, 1989 ruling in Service Employees International Union v. Fair Political Practices Commission, U.S. District Court, Eastern Dist. of California, No. CIVS-89-0433 LKK-JFM. In that case, the court granted a preliminary injunction limiting enforcement of certain provisions of Proposition 73. This ruling provides that campaign funds received by a candidate prior to January 1, 1989 may be used in connection with the candidate's future election, so long as the contributions which make up the funds were within the contribution limitations of Proposition 73 at the time they were received, or are brought into compliance with the limitations. (For example, \$1,000 of a contribution from an individual may be carried over for use after January 1, 1989.)

With regard to office equipment and other assets, if Friends of Larry Walker intends to use assets purchased after June 8, 1988, the assets must be re-purchased with money received within the contribution limitations of Proposition 73. Assets purchased prior to June 8, 1988, may be allocated for use in connection with a future campaign, and are not required to be re-purchased.

1/ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

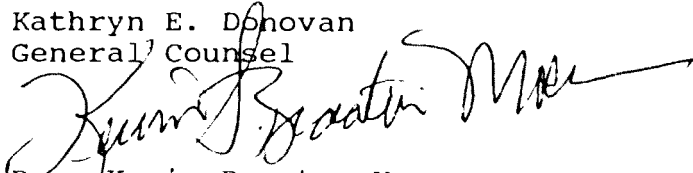
Betsy Starbuck
Page Two

With regard to campaign funds received prior to January 1, 1989, such funds may be used for Mr. Walker's future election, as long as the funds were within the contribution limitations at the time received, or are brought into compliance with the limitations. If you have any questions concerning the procedures for bringing funds into compliance with the contribution limitations, please call me.

You may wish to contact the Commission in a few weeks to determine whether a final ruling has been issued by the court. Once the final ruling is issued, we can provide additional information concerning its effects on Proposition 73's provisions.

Sincerely,

Kathryn E. Donovan
General Counsel



By: Kevin Braaten-Moen
Political Reform Consultant

documentation, I called you that afternoon to present an argument to your decision. You directed me to write this letter. As of this date, the money which had been transferred to the campaign account has been returned to the Restricted Account pending the response to this letter. We wanted to play it safe.

THE ARGUMENT:

1. There is no difference between assets and money. Assets are simply converted money.
2. The SEIU vs. FPPC case did not address the issue of assets. However, in addressing funds, the court ruled that "those funds that were raised prior to January 1, 1989 (emphasis added) in amount within the overall contribution limits contained in Proposition 73" may be carried over for future campaigns.
3. All assets were purchased with funds from the pre-Prop. 73 committee and were purchased or "raised" prior to January 1, 1989.
4. Use of the Proposition's date of passage, June 8, 1988, is irrelevant to determination of assets just as it was not relevant in the court's decision in SEIU vs. FPPC.

I argue that the Friends of Larry Walker should not be required to purchase the assets of the former campaign committee and should be allowed to carry them over for use in future campaigns. I suggest procedures similar to the ones used for carrying over funds could be employed for the carrying over of assets:

1. Determine the fair market value of the assets.
2. Review the (former) committee's records of contributions received. Start with the last contribution received and work backward to the total of the fair market value of the assets.
3. If the contribution was \$1,000 or less from a person or company, that portion of the assets is transferable to the campaign committee.
4. If the contribution was more than \$1,000, then a maximum of \$1,000 in assets could be transferred to the campaign committee.

5. The process continues until the total fair market valuation is reviewed.
6. Any amount of contributions in excess of the current contribution limitations would be deposited in the Restricted Account.

This process could be used in conjunction with the process for transfer of funds, although it is not applicable to our situation.

Should you grant a favorable decision, I request that the money which has been re-deposited to the Restricted Account pending your decision be transferred to the Friends of Larry Walker campaign account. Whether your decision agrees with my argument or not, I need your assistance in determining how to report the transfers of funds which have already taken place.

Should you have any questions or require more information, please call me at (714) 425-0111. If you desire, I would be available to meet with you and/or your colleagues in your offices to discuss this situation further. I eagerly await your decision.

Sincerely yours,

A handwritten signature in cursive script that reads "Betsy Starbuck". The signature is written in dark ink and is positioned below the typed name.

BETSY STARBUCK

Enclosures

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CERTIFICATE OF SERVICE

CIV S 89-433 LKK

SERVICE EMPLOYEES INTERNATIONAL)
UNION, AFL-CIO, CLC, et al.,)
v)
)
)
FAIR POLITICAL PRACTICES)
COMMISSION,)

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, for the Eastern District of California.

That on 5-19-89, I served a copy of the attached Order, by placing said copy in a postage paid envelope addressed to the person(s) listed below by depositing said envelope in the U.S. Mail in Sacramento, California, or by placing said copy into an inter-office delivery receptacle located in the Office of the Clerk.

SERVED BY MAIL

SERVICE BY INTER-OFFICE

Joseph Remcho, Esq.
Kathleen J. Purcell, Esq.
Lowell Finley, Esq.
Julie M. Randolph, Esq.
Steven D. Dopkin, Esq.
REMCHO, JOHANSEN & PURCELL
220 Montgomery Street
Suite 800
San Francisco, CA 94104

LKK

Kathryn E. Donovan, Esq.
Scott Hallabrin, Esq.
Fair Political Practices Comm.
428 "J" Street, Suite 800
Sacramento, CA 95814

Quentin L. Kopp, Esq.
KOPP & DiFRANCO
300 Montgomery Street
Suite 730
San Francisco, CA 94104

JAMES R. GRINDSTAFF, Clerk

Connie A. Ward
BY: Connie A. Ward
Deputy Clerk

FILED

MAY 13 11 39 AM '89

BY CLERK

1 JOSEPH REMCHO (54400)
KATHLEEN J. PURCELL (84992)
2 LOWELL FINLEY (104414)
JULIE M. RANDOLPH (122464)
3 STEVEN D. DOPKIN (125005)
REMCHO, JOHANSEN & PURCELL
4 220 Montgomery Street, Suite 800
San Francisco, California 94104
5 Telephone: 415/398-6230
6 Attorneys for Plaintiffs

7
8 **LODGED**

MAY 17 1989

CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY CLERK DEPUTY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

11	SERVICE EMPLOYEES INTERNATIONAL)	NO. CIVS 89-0433
12	UNION, AFL-CIO, CLC; et al.,)	LKK-JFM
13	Plaintiffs,)	ORDER GRANTING MOTION FOR
14	vs.)	PRELIMINARY INJUNCTION
15	FAIR POLITICAL PRACTICES)	Hearing date: May 15, 1989
16	COMMISSION,)	
17	Defendant.)	

18
19 Plaintiffs' motion for preliminary injunction came on
20 for hearing on May 15, 1989. Plaintiffs seek to enjoin certain
21 provisions of Proposition 73, codified as chapter 5 to title 9
22 of the California Government Code. The challenged sections
23 concern the use of funds raised prior to January 1989 (\$85306);
24 the ability of candidates to transfer funds between their own
25 committees (\$85200, 85201, 85202, and 85304), and contribution
26 limits as applied to certain organizations' communications with

1 their members (§85301(a)).

2 Plaintiffs were represented at the hearing by Joseph
3 Remcho and Julie M. Randolph. Defendant Fair Political
4 Practices Commission was represented by Scott Hallabrin and
5 ~~Kathryn~~ Katherine Donovan. Amici curiae Ross Johnson and Quentin Kopp
6 were represented by William F. Fitzgerald.

7 Having considered the evidence and the briefs pre-
8 sented by the parties and the brief submitted by amici, and the
9 arguments of the parties and amici, the Court announced its
10 disposition of the motion and its reasons therefor into the
11 record and ordered counsel for plaintiffs to prepare a formal
12 order consistent therewith.

13 The basis for injunctive relief in the federal courts
14 is the existence of irreparable injury and the inadequacy of
15 legal remedies. Weinberger v. Romero-Barcelo, 456 U.S. 305, 312
16 (1982). The Ninth Circuit requires that the moving party
17 demonstrate: (1) a likelihood of success on the merits; (2) the
18 possibility of irreparable injury; (3) that, in balancing the
19 equities, the non-moving party will not be harmed more than the
20 moving party is helped by the injunction, and (4) that granting
21 the injunction is in the public interest. Martin v. Inter-
22 national Olympic Comm., 740 F.2d 670, 674-675 (9th Cir. 1984).

23 Plaintiffs have provided factual evidence showing that
24 the challenged provisions affect the exercise of their First
25 Amendment rights. Defendants have not disputed plaintiffs'
26 evidence. Plaintiffs' evidence is therefore adopted by refer-

1 ence as findings of fact. The Court will address each of
2 plaintiffs' claims in turn.

3
4 **I. Section 85306 (Carryover Funds)**

5 Section 85306 prohibits the use of campaign funds
6 raised prior to January 1, 1989 to support or oppose a candidacy
7 for elective office. The funds may be used for any other lawful
8 purpose. Buckley v. Valeo, 424 U.S. 1 (1976) invalidated
9 similar limitations on candidates' expenditures. Buckley's
10 First Amendment analysis is fully applicable here. The ban on
11 the use of these funds is unconstitutional. However, in order
12 to avoid granting what would essentially be permanent injunctive
13 relief on this preliminary motion, the Court finds that it is
14 appropriate to enjoin the enforcement of the provision only as
15 to those funds raised within the contribution limits of Proposi-
16 tion 73.

17
18 **II. Sections 85201, 85202, 85203 and 85304 (Candidates' Use of Funds)**

19 Section 85304 prohibits the transfer of funds between
20 one candidate's separate campaign committees. The scheme
21 embodied in these sections also impermissibly intrudes on a
22 candidate's First Amendment rights, as set out in plaintiffs'
23 brief. Plaintiffs' analysis is adopted by reference.

24
25 **III. Section 85301(a) (Contribution Limits Applied to Unions)**

26 Section 85301(a), as construed by regulation, prohi-

1 bits any communications between unions ^{or membership organizations} and ~~non-profit organiza-~~
2 ~~tions~~ and their members about a particular candidacy, if the
3 aggregate communications cost over \$1,000. As construed by
4 regulation, the effects described by plaintiffs impermissibly
5 burden their First Amendment associational freedoms. See
6 Buckley at 14; United States v. Congress of Industrial Organiza-
7 tions, 335 U.S. 106, 121 (1948). For the reasons described by
8 plaintiffs, this section is not narrowly tailored to serve a
9 governmental interest, and it must be declared unconstitutional
10 as applied.

11 12 Application of Preliminary Injunction Standards

13 Plaintiffs have established a strong likelihood of
14 success on the merits for each of their claims. The abridgement
15 of First Amendment freedoms constitutes irreparable injury.
16 Elrod v. Burns, 427 U.S. 347, 373-374 (1976); accord, Jacobsen
17 v. U.S. Postal Service, 812 F.2d 1151 (9th Cir. 1987). The
18 record before the Court indicates that the challenged provisions
19 impose a real and substantial chill on the exercise of political
20 speech and association. Plaintiffs have adequately shown a
21 threat to their First Amendment rights and have established the
22 possibility of irreparable harm.

23 For these reasons, the Court finds that defendant will
24 not be harmed more than plaintiffs are helped by a preliminary
25 injunction. The state's inability to enforce the challenged
26 provisions does not outweigh the injury to plaintiffs' First

1 Amendment rights where the provisions do not bear a close
2 relationship to curing the asserted evil of political corrup-
3 tion. Finally, in affirming First Amendment principles, grant-
4 ing the injunction is in the public interest.

5 For the foregoing reasons, IT IS HEREBY ORDERED that
6 plaintiffs' motion for preliminary injunction is granted as
7 follows:

8 1) Defendant is enjoined from enforcing California
9 Government Code sections 85200, 85201, 85202 and 85304 to the
10 extent that those provisions prohibit transfers of funds between
11 one candidate's separate committees.

12 2) Defendant is further enjoined from enforcing the
13 provisions of California Government Code section 85306 as to
14 those funds that were raised prior to January 1, 1989 in amounts
15 within the overall contribution limits contained in Proposition
16 73, California Government Code sections 85100, et seq.

17 3) Finally, enforcement of section 85301(a) is also
18 enjoined to the extent that it is interpreted by regulation to
19 interfere with a union's or ^{membership} ~~non-profit~~ organization's communica-
20 tions with its members. *E/K*

21 IT IS SO ORDERED.

22 DATED: 5/19/89

23 *Lawrence K. Karlton*
LAWRENCE K. KARLTON

24 Chief Judge

25 United States District Court
26



FFPC
JUL 18 1989
RECEIVED

June 26, 1989

Kevin Braaten-Moen
Fair Political Practices Commission
POB 807
Sacramento CA 95804-0807

Dear Kevin:

This letter confirms our conversation of June 2, 1989 in regard to the ruling in Service Employees International Union vs. Fair Political Practices Commission.

I understand the new process you described to me to include:

1. On or before June 30, 1989, review the total amount of money in the restricted account.
2. Review the (former) Committee's records of contributions received. Start with the last contribution received and work backward.
3. If the contribution was \$1,000 or less from a person or company, it is totally transferable to the present Committee's campaign account.
4. If the contribution was more than \$1,000, then a maximum of \$1,000 could be transferred to the campaign account and the balance of that contribution would remain in the restricted account.
5. The process would continue until the total amount in the restricted account had been reviewed.

In our subsequent conversation today, I asked you how to report this process. My understanding is that any money transferred to the campaign account via this process should be reported on Form 490, Summary Page, as "Cash on hand at the beginning of this period." I also understand that adequate documentation should be kept in the event of a challenge to the process.

Kevin, I appreciate your assistance in this ever-changing area of the law. If I have misstated any part of the process, please call me at (714) 425-0111.

Sincerely yours,

Betsy Starbuck

BETSY STARBUCK

bc: Larry Walker
Jim Garbo
Rober Melanson

DOCUMENTATION LIST
for
TRANSFER OF FUNDS
from
RESTRICTED ACCOUNT
to
CAMPAIGN ACCOUNT
(per FPPC)

JUL 18 1989

DONOR	DATE of DONATION	AMT. of DONATION	To REST. ACCOUNT	To CAMP. ACCOUNT
Dennis & Su Hansberger	8-12-88	1,000		1,000
Leon Ohanesian	6-10-88	1,000		1,000
DeVere Anderson	6-09-88	1,000		1,000
Jack Turner, M.D.	6-08-88	1,500	500	1,000
Leon Arnone	6-08-88	1,000		1,000
Ed Badalian	6-08-88	1,000		1,000
Harold & Dorothy Courtney	6-08-88	100		100
Jose Ghibauda	6-07-88	1,000		1,000
Lou Wolfsheimer	6-03-88	1,000		1,000
Affiliated Cities Apartment Assn.	5-31-88	280		280
Muncy Company	5-14-88	280		280
S.B. & Riv. Counties Disposal Assn.	5-12-88	500		500
Anden Group	5-11-88	1,400	400	1,000
William D. Lusk/Lusk Company	5-11-88	140		140
Jim & Jody Poulos/Pann's Restaurant	5-06-88	1,000		1,000
Lockheed Air Services	5-05-88	280		280
Jimmy Gutierrez	4-30-88	560		560
Howard Ambulance Co. Inc.	4-30-88	420		420
Mackey Investigation	4-30-88	140		140
Earl & Carolyn Owens	4-30-88	140		140
Maury & Camille Panza	4-30-88	100		100
Rancho Monte Vista Mobile Home Park	4-30-88	280		280
Remedy Temp	4-30-88	700		700
Steven & Jennifer Rice	4-30-88	420		420
Robertson's Ready Mix, Inc.	4-30-88	1,400	400	1,000
S.B. County Central Credit Union	4-30-88	560		560
Schaefer Ambulance	4-30-88	280		280
Upland Masonry	4-30-88	280		280
Valley Medical Transport, Inc.	4-30-88	250		250
Pacific Enterprises PAC	4-30-88	250		250
United Domestic Workers PAC	4-30-88	700		700
Raymond & Leslie Medina	4-29-88	280		280
Letitia Hoadley	4-29-88	140		140
Retail Clerks Union, Local 1428	4-28-88	280		280
Malins Pool & Spa Supply	4-28-88	100		100
Ronnie & Joan McBryde	4-28-88	140		140

Inland Valley Property & Investments	4-28-88	150	150
S.B. County Firefighters, Local 935	4-28-88	560	560
Shea Homes	4-28-88	*560	*40
		<hr/>	
		20,170	1,300
			18,350
			19,650

EXPLANATION: The figure of \$19,650 was the balance in the Restricted Account on 6-29-88. The FPPC process starts with the last donation received by the former committee, the Larry Walker Supervisor Committee, which in this case was a \$1,000 from Dennis & Su Hansberger on 8-12-88. Working backward, the goal is to account for the total (\$19,650) in the Restricted Account. The asterisk (*) by the Shea Homes donation indicates that their total donation was \$560, but only \$40 could be transferred so as not to exceed the balance in the Restricted Account. When added together, the amount retained in the Restricted Account (\$1,300) and the amount transferred to the Campaign Account because of this process (\$18,350) total \$19,650.

**Larry
Walker**
County Supervisor

FPPC
JUL 18 1989
RECEIVED

July 14, 1989

Kevin Braaten-Moen
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804-0807

Dear Kevin,

This letter is sent in confirmation of our three conversations on July 6, 1989. Generally, our discussions centered on assets and the ability to carry them forward for use in future campaigns or the need to re-purchase them for use in future campaigns. You informed me that the action taken by the Friends of Larry Walker on June 29, 1989 was incorrect. As I explained on the sixth, I disagree with the reasoning behind the decision and I would appreciate your assistance in seeking a higher administrative or legal review. I am enclosing a copy of all pertinent previous correspondence regarding this matter, as well as the following explanation of actions taken.

On June 8, 1988, the date of passage of Proposition 73, San Bernardino County Supervisor Larry Walker had only one committee, the Larry Walker Supervisor Committee, ID # 851711. As you know, Proposition 73 caused considerable confusion for committees, as well as your office. Our review of the measure led us to interpret that the money on hand in the account could not be used after January 1, 1989. We took two actions: 1) we depleted the account and 2) we filed a Statement of Termination for the Larry Walker Supervisor Committee on December 31, 1988. Please reference my letter to Alice Hughes dated October 13, 1988 and her response to me dated November 15, 1988 (enclosed). Neither of our letters addresses the disposal of assets, nor does Section 84214, Regulation 18404, which she cited and enclosed with her letter.

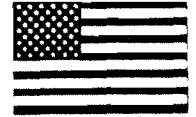
On October 3, 1988, a new campaign committee was qualified and a Statement of Organization was filed within ten days to create the Friends of Larry Walker, ID # 882230. Although your forms 501 and 502 were not available at the time, we wrote to the FPPC a letter stating Supervisor Walker's intention to seek re-election in 1990. Subsequently, we express-mailed to you the pertinent information regarding the establishment of the campaign bank account. When the forms became available, we re-filed the same information.

In April, 1989, I happened to be talking with some other politically active folks in the area and the topic of Prop. 73 was discussed. I explained what we had done (as above). Someone asked about assets and I had to admit that I didn't know and hadn't thought about what was to be done with the assets. So I called Technical Assistance and spoke with you. Please reference my letter to you dated April 28, 1989. During May, we sought an independent evaluation of the assets to determine the fair market value. Also during May, the Friends of Larry Walker issued a check for \$1,000 to the "County Supervisor Larry Walker - Restricted Account" in order to get the account established and order checks. We knew the assets would exceed this amount. Upon receipt of the fair market evaluation, the committee wrote a check for the balance of the assets' value.

On June 2, 1989, I telephoned you to inquire about the results of the latest lawsuit, Service Employees International Union vs. FPPC. You stated you had just signed a letter to me which would explain the results, but you courteously took the time to explain the procedures for bringing the funds in the Restricted Account into compliance for transfer to the Campaign Account. Please reference your letter dated June 2, 1989 and my letter confirming our conversation dated June 26, 1989. On June 29, 1989, we followed the procedure as I set forth in my letter. As a result, a check was issued from the Restricted Account to the Campaign Account. Enclosed is a Documentation List which we prepared to explain our transfer of funds.

When it became apparent to you through our telephone conversation on July 6, 1989, that we had purchased the assets with money from the campaign account and then transferred money back to the campaign account using the outlined procedures, you informed me that you believed our action was incorrect. After checking with someone else in your office, you called me and confirmed that the action was incorrect. After reviewing the letters and other

elect
Larry Walker
county supervisor



October 13, 1988

Alice Hughes, Technical Assistance
Fair Political Practices Commission
POB 807
Sacramento CA 95804

Dear Ms. Hughes:

This letter is to confirm our conversation of Friday, October 7, 1988. I appreciate your time in researching the process by which the Larry Walker Supervisor Committee will terminate and the Friends of Larry Walker will begin.

In regard to the Larry Walker Supervisor Committee, it is my understanding that, although all funds probably will be expended by the end of October, you instructed me to file a Statement of Termination (Form 415), effective December 31, 1988, with the Secretary of State and a copy to the Registrar of Voters. Then, by January 31, 1989, a Semi-Annual Campaign Statement is to be filed for the period from July 1, 1988 through December 31, 1988.

The new committee, Friends of Larry Walker, will file a Statement of Organization (Recipient Committee, Form 410) within ten (10) days of receiving \$1,000 in contributions, with the original and one copy to the Secretary of State, and one copy to the Registrar of Voters. Then, by January 31, 1989, this committee will also file a Semi-Annual Campaign Statement for the period from July 1, 1988 through December 31, 1988, although it did not qualify as a committee until October 3, 1988.

If I misunderstood any part of our conversation, please let me know. Otherwise, I will follow your guidelines as instructed.

Sincerely yours,

A handwritten signature in cursive script that reads "Betsy Starbuck".

BETSY STARBUCK

cc: James M. Garbo, Treasurer



Form 415
1988

STATEMENT OF TERMINATION

This form must be completed by Candidates, Officeholders
or Recipient Committees that wish to terminate
pursuant to Government Code Section 84214.

FPPC

JUL 18 1988

RECEIVED

(Type or Print in Ink)

A OFFICIAL USE ONLY

COMMITTEE: (COMMITTEES FILE ORIGINAL AND ONE COPY OF THIS FORM WITH THE SECRETARY OF STATE AND, IF APPLICABLE, A COPY WITH THE LOCAL FILING OFFICER)

NAME OF COMMITTEE:						I.D. NUMBER	
LARRY WALKER SUPERVISOR COMMITTEE						851711	
ADDRESS OF COMMITTEE:		NO. AND STREET	CITY	STATE	ZIP CODE	AREA CODE	PHONE NUMBER
		5555 Locust Street	Chino	CA	91710	714	628-8000
NAME OF TREASURER:							
James M. Garbo							
PERMANENT ADDRESS OF TREASURER:		NO. AND STREET	CITY	STATE	ZIP CODE	AREA CODE	BUSINESS PHONE NUMBER
		617 Cadenza Court	Ontario	CA	91761	714	622-1375

VERIFICATION

I have used all reasonable diligence in preparing this statement. This committee has ceased to receive contributions and make expenditures, does not anticipate receiving contributions or repayments of outstanding loans made to others or any other receipts or making expenditures in the future, has eliminated or has declared that it has no intention or ability to discharge all debts, loans received and other obligations, has no surplus funds, and has filed all campaign statements required by the Political Reform Act disclosing all reportable transactions.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 12-31-88 at Chino, CA by James M. Garbo
(Date) (City and State) (Signature of Treasurer)

Executed on 881231 at Chino, CA by Larry Walker
(Date) (City and State) (Signature of Controlling Candidate, Officeholder or State Measure Proponent)

CANDIDATE OR OFFICEHOLDER: (CANDIDATES AND OFFICEHOLDERS FILE AN ORIGINAL OF THIS FORM WITH THE FILING OFFICER WITH WHOM THEY FILE THE ORIGINAL OF THEIR CAMPAIGN STATEMENTS)

NAME OF CANDIDATE OR OFFICEHOLDER:						OFFICE SOUGHT OR HELD (INCLUDE LOCATION AND DISTRICT NUMBER IF APPLICABLE)	
LARRY WALKER						Co. Supervisor 4th District, San Bernardino	
RESIDENTIAL ADDRESS:		NO. AND STREET	CITY	STATE	ZIP CODE	AREA CODE	PHONE NUMBER
		5555 Locust Street	Chino	CA	91710	714	628-8000
BUSINESS ADDRESS		NO. AND STREET	CITY	STATE	ZIP CODE	AREA CODE	PHONE NUMBER
		POB 968	Chino	CA	91708	714	628-8000

VERIFICATION

I have used all reasonable diligence in preparing this statement. I have ceased to receive contributions and make expenditures, do not anticipate receiving contributions or repayments of outstanding loans made to others or any other receipts or making expenditures in the future, have eliminated or have declared that I have no intention or ability to discharge all debts, loans received and other obligations, have no surplus funds, and have filed all campaign statements required by the Political Reform Act disclosing all reportable transactions.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 881231 at Chino, CA by Larry Walker
(Date) (City and State) (Signature of Candidate or Officeholder)

NOTE: Additional filing obligations will be incurred if a candidate or committee begins raising or spending funds or receives the forgiveness of a loan or repayments of loans made to others or any other receipts.



California Fair Political Practices Commission

FPPC
JUL 18 1989
RECEIVED

November 15, 1988

Betsy Starbuck
P.O. Box 968
Chino, California 91708

Re: Your Request for Information
Our File No. A-88-401

Dear Ms. Starbuck:

You have requested advice on behalf of Larry Walker, San Bernardino County Supervisor, regarding his reporting requirements under the campaign disclosure provisions of the Political Reform Act (the "Act")^{1/}.

FACTS

Mr. Walker plans to terminate his current committee, Larry Walker Supervisor Committee, and organize a new committee, Friends of Larry Walker. The Larry Walker Supervisor Committee planned to deplete all funds during October 1988. Friends of Larry Walker qualified as a committee on October 3, 1988.

QUESTIONS

1. When is the statement of termination (Form 415) for the Larry Walker Supervisor Committee required to be filed?
2. When is the statement of organization (Form 410) for the Friends of Larry Walker committee required to be filed?
3. How should the committees file the semi-annual campaign statements due on January 31, 1989?

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

CONCLUSION

1. The statement of termination (Form 415) for the "old" committee may be filed at any time after the committee meets the criteria set out in Regulation 18404 (copy enclosed). The original and one copy must be sent to the Secretary of State and a copy to the San Bernardino County Registrar of Voters. The copy filed with the San Bernardino County Registrar of Voters must include a completed campaign statement (Form 490) covering the period from the closing date of your last campaign statement through the date of termination. On the cover page of the Form 490, Part III, Friends of Larry Walker and any other committee which Mr. Walker controls and which is not included in the report must be listed.

2. The statement of organization (Form 410) for the "new" committee must be filed within 10 days of receiving \$1,000 or more. The original and one copy of the statement of organization must be filed with the Secretary of State and a copy with the San Bernardino County Registrar of Voters.

3. The Friends of Larry Walker Committee must file a campaign disclosure statement (Form 490) no later than January 31, 1989. This campaign statement must cover the period from January 1, 1988 through December 31, 1988. The Larry Walker Supervisor Committee must be listed in Part III of the cover page of the statements.

ANALYSIS

Every committee must file a statement of organization (Form 410) within 10 days of receiving \$1,000 in contributions. (Section 84101.) Also, a recipient committee must file periodic campaign disclosure statements until it has filed a statement of termination (Form 415). (Section 84214; Regulation 18404.)

Regulation 18404 provides that a candidate, officeholder or recipient committee may terminate if it:

--Has ceased to receive contributions and make expenditures and does not anticipate receiving contributions or making expenditures in the future;

--Has eliminated or has declared that it has no intention or ability to discharge all of its debts, loans received and other obligations;

--Has no surplus funds; and

--Has filed all required campaign statements disclosing all reportable transactions.

Betsy Starbuck
Page Three
November 15, 1988

The original and one copy of the statement of organization and the statement of termination are required to be filed with the Secretary of State. In addition, a copy is required to be filed with the local filing officer. (Government Code Section 84101.)

Previously, we advised you that the Larry Walker Supervisor Committee should not terminate until after December 31, 1988, even though the committee has ceased to receive contributions and make expenditures. However, after further consideration, we conclude that the committee may terminate at any time as long as it meets the requirements for termination described above.

If you have any additional questions, please feel free to call me at (916) 322-5662.

Sincerely,

Diane M. Griffiths
General Counsel



By: Alice Hughes
Technical Assistance and
Analysis Division

AH:ssa
Enclosure

(Regulations of the Fair Political Practices Commission
Title 2, Division 6 of the California Administrative Code

18404. Termination of Candidate's and Committees' Filing Requirements

(a) The filing obligations of a committee which qualifies pursuant to Government Code Section 82013(b) or (c) terminate at the end of the calendar year in which the committee qualified, except to the extent that additional campaign statements are required by Government Code Sections 84200, 84203, 84203.5 and 84204. If additional campaign statements are filed after the beginning of a new calendar year because the committee files a statement in connection with the qualification of a measure or a semiannual statement covering activity for the period July 1 through December 31, the committee's filing obligations terminate when such statements have been filed.

(b) A candidate may terminate his or her status as a candidate, and a treasurer of a committee which qualifies pursuant to Government Code Section 82013(a) may terminate the committee's status as a committee, only by filing a Statement of Termination declaring, under penalty of perjury, that the candidate or committee:

(1) Has ceased to receive contributions and make expenditures and does not anticipate receiving contributions or making expenditures in the future;

(2) Has eliminated or has declared that it has no intention or ability to discharge all of its debts, loans received and other obligations;

(3) Has no surplus funds; and

(4) Has filed all required campaign statements disclosing all reportable transactions.

(c) A Statement of Termination filed pursuant to subsection (b) shall be filed as follows:

(1) In the case of a committee, the original with the Secretary of State, and a copy with each filing officer with whom a copy of the committee's last campaign statement was filed;

(2) In the case of a candidate, the original with the filing officer with whom the original of the candidate's last campaign statement was filed.

(d) A candidate or a committee which has terminated remains subject to all civil and criminal penalties and remedies for any violations of this title or any other provision of law.

(Gov. Code Section 84214)

History: (1) New section filed 3/31/77; effective 4/30/77.
(2) Amendment of (a) filed 5/22/78; effective 6/21/78.
(3) Amendment filed 2/17/82; effective 3/19/82.
(4) Amendment filed 3/3/86; effective 4/2/86.

FRIENDS OF LARRY WALKER
P.O. BOX 968
CHINO CA 91708-0968

April 28, 1989

Kevin Braaten-Moen
Fair Political Practices Commission
POB 807
Sacramento CA 95804

Dear Mr. Braaten-Moen:

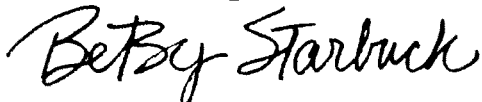
In response to our conversation of a few weeks ago, I understand now that in order for Supervisor Walker's new committee (Friends of Larry Walker, ID #882230) to use assets (office equipment, supplies, etc.) which had been purchased by his old committee (Larry Walker Supervisor Committee, ID #851711) in a campaign, the new committee must purchase the assets at fair market value.

When we receive the valuation, the Friends of Larry Walker will write a check to "County Supervisor Larry Walker - Restricted Account."

A Statement of Termination was filed for the Larry Walker Supervisor Committee on 12-31-88. Upon establishment of the Restricted Account, it is my understanding that since it is not a campaign account, a Statement of Organization does not need to be filed, no I.D. number is issued, no notification of location and account number is required, and only semi-annual Form 490R reports are required.

If I have misunderstood any aspect of establishing and maintaining a restricted account, please let me know. I appreciate your attention and efforts in this matter.

Sincerely yours,

A handwritten signature in cursive script that reads "Betsy Starbuck".

BETSY STARBUCK

bc: Jim Garbo
Roger Melanson



California Fair Political Practices Commission

June 2, 1989

JUL 18 1989

RECEIVED

Betsy Starbuck
Friends of Larry Walker
P.O. Box 968
Chino, CA 91708-0968

Re: Your Request for Advice
Our File No. A-89-266

Dear Ms. Starbuck:

You have requested confirmation of telephone advice concerning the campaign provisions of the Political Reform Act of 1974.1/

You asked about use of campaign funds received and use of assets purchased prior to January 1, 1989.

My telephone advice was provided prior to the May 15, 1989 ruling in Service Employees International Union v. Fair Political Practices Commission, U.S. District Court, Eastern Dist. of California, No. CIVS-89-0433 LKK-JFM. In that case, the court granted a preliminary injunction limiting enforcement of certain provisions of Proposition 73. This ruling provides that campaign funds received by a candidate prior to January 1, 1989 may be used in connection with the candidate's future election, so long as the contributions which make up the funds were within the contribution limitations of Proposition 73 at the time they were received, or are brought into compliance with the limitations. (For example, \$1,000 of a contribution from an individual may be carried over for use after January 1, 1989.)

With regard to office equipment and other assets, if Friends of Larry Walker intends to use assets purchased after June 8, 1988, the assets must be re-purchased with money received within the contribution limitations of Proposition 73. Assets purchased prior to June 8, 1988, may be allocated for use in connection with a future campaign, and are not required to be re-purchased.

1/ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

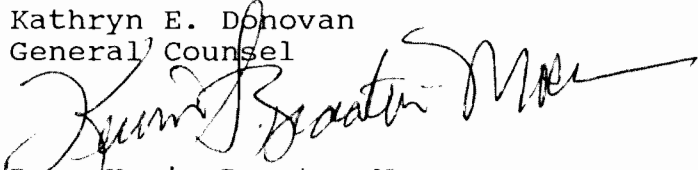
Betsy Starbuck
Page Two

With regard to campaign funds received prior to January 1, 1989, such funds may be used for Mr. Walker's future election, as long as the funds were within the contribution limitations at the time received, or are brought into compliance with the limitations. If you have any questions concerning the procedures for bringing funds into compliance with the contribution limitations, please call me.

You may wish to contact the Commission in a few weeks to determine whether a final ruling has been issued by the court. Once the final ruling is issued, we can provide additional information concerning its effects on Proposition 73's provisions.

Sincerely,

Kathryn E. Donovan
General Counsel

A handwritten signature in black ink, appearing to read "Kevin Braaten-Moen", written over the typed name.

By: Kevin Braaten-Moen
Political Reform Consultant

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CERTIFICATE OF SERVICE

)
SERVICE EMPLOYEES INTERNATIONAL)
UNION, AFL-CIO, CLC, et al.,)
v)
)
)
)
FAIR POLITICAL PRACTICES)
COMMISSION,)

CIV S 89-433 LKK

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, for the Eastern District of California.

That on 5-19-89, I served a copy of the attached Order, by placing said copy in a postage paid envelope addressed to the person(s) listed below by depositing said envelope in the U.S. Mail in Sacramento, California, or by placing said copy into an inter-office delivery receptacle located in the Office of the Clerk.

SERVED BY MAIL

SERVICE BY INTER-OFFICE

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LKK

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JAMES R. GRINDSTAFF, Clerk

Connie A. Ward
BY: Connie A. Ward
Deputy Clerk

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MAY 13 11 29 AM '89

BY CLERK

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2 KATHLEEN J. PURCELL (84992)
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11 **LODGED**

12 **MAY 17 1989**

13 CLERK U.S. DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA

15 BY DEPUTY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

16 SERVICE EMPLOYEES INTERNATIONAL)
17 UNION, AFL-CIO, CLC; et al.,)
18)
19 Plaintiffs,)
20)
21 vs.)
22)
23 FAIR POLITICAL PRACTICES)
24 COMMISSION,)
25)
26 Defendant.)

NO. CIVS 89-0433
LKK-JFM

ORDER GRANTING MOTION FOR
PRELIMINARY INJUNCTION

Hearing date: May 15, 1989

Plaintiffs' motion for preliminary injunction came on for hearing on May 15, 1989. Plaintiffs seek to enjoin certain provisions of Proposition 73, codified as chapter 5 to title 9 of the California Government Code. The challenged sections concern the use of funds raised prior to January 1989 (§85306); the ability of candidates to transfer funds between their own committees (§§85200, 85201, 85202, and 85304), and contribution limits as applied to certain organizations' communications with

1 their members (§85301(a)).

2 Plaintiffs were represented at the hearing by Joseph
3 Remcho and Julie M. Randolph. Defendant Fair Political
4 Practices Commission was represented by Scott Hallabrin and
5 ~~Katherine~~ Kathryn Donovan. Amici curiae Ross Johnson and Quentin Kopp
6 were represented by William F. Fitzgerald.

7 Having considered the evidence and the briefs pre-
8 sented by the parties and the brief submitted by amici, and the
9 arguments of the parties and amici, the Court announced its
10 disposition of the motion and its reasons therefor into the
11 record and ordered counsel for plaintiffs to prepare a formal
12 order consistent therewith.

13 The basis for injunctive relief in the federal courts
14 is the existence of irreparable injury and the inadequacy of
15 legal remedies. Weinberger v. Romero-Barcelo, 456 U.S. 305, 312
16 (1982). The Ninth Circuit requires that the moving party
17 demonstrate: (1) a likelihood of success on the merits; (2) the
18 possibility of irreparable injury; (3) that, in balancing the
19 equities, the non-moving party will not be harmed more than the
20 moving party is helped by the injunction, and (4) that granting
21 the injunction is in the public interest. Martin v. Inter-
22 national Olympic Comm., 740 F.2d 670, 674-675 (9th Cir. 1984).

23 Plaintiffs have provided factual evidence showing that
24 the challenged provisions affect the exercise of their First
25 Amendment rights. Defendants have not disputed plaintiffs'
26 evidence. Plaintiffs' evidence is therefore adopted by refer-

1 ence as findings of fact. The Court will address each of
2 plaintiffs' claims in turn.

3
4 **I. Section 85306 (Carryover Funds)**

5 Section 85306 prohibits the use of campaign funds
6 raised prior to January 1, 1989 to support or oppose a candidacy
7 for elective office. The funds may be used for any other lawful
8 purpose. Buckley v. Valeo, 424 U.S. 1 (1976) invalidated
9 similar limitations on candidates' expenditures. Buckley's
10 First Amendment analysis is fully applicable here. The ban on
11 the use of these funds is unconstitutional. However, in order
12 to avoid granting what would essentially be permanent injunctive
13 relief on this preliminary motion, the Court finds that it is
14 appropriate to enjoin the enforcement of the provision only as
15 to those funds raised within the contribution limits of Proposi-
16 tion 73.

17
18 **II. Sections 85201, 85202, 85203 and 85304 (Candidates' Use of Funds)**

19 Section 85304 prohibits the transfer of funds between
20 one candidate's separate campaign committees. The scheme
21 embodied in these sections also impermissibly intrudes on a
22 candidate's First Amendment rights, as set out in plaintiffs'
23 brief. Plaintiffs' analysis is adopted by reference.

24
25 **III. Section 85301(a) (Contribution Limits Applied to Unions)**

26 Section 85301(a), as construed by regulation, prohi-

1 bits any communications between unions ^{or membership organizations} and ~~non-profit organiza-~~
2 ~~tions~~ and their members about a particular candidacy, if the
3 aggregate communications cost over \$1,000. As construed by
4 regulation, the effects described by plaintiffs impermissibly
5 burden their First Amendment associational freedoms. See
6 Buckley at 14; United States v. Congress of Industrial Organiza-
7 tions, 335 U.S. 106, 121 (1948). For the reasons described by
8 plaintiffs, this section is not narrowly tailored to serve a
9 governmental interest, and it must be declared unconstitutional
10 as applied.

11 12 Application of Preliminary Injunction Standards

13 Plaintiffs have established a strong likelihood of
14 success on the merits for each of their claims. The abridgement
15 of First Amendment freedoms constitutes irreparable injury.
16 Elrod v. Burns, 427 U.S. 347, 373-374 (1976); accord, Jacobsen
17 v. U.S. Postal Service, 812 F.2d 1151 (9th Cir. 1987). The
18 record before the Court indicates that the challenged provisions
19 impose a real and substantial chill on the exercise of political
20 speech and association. Plaintiffs have adequately shown a
21 threat to their First Amendment rights and have established the
22 possibility of irreparable harm.

23 For these reasons, the Court finds that defendant will
24 not be harmed more than plaintiffs are helped by a preliminary
25 injunction. The state's inability to enforce the challenged
26 provisions does not outweigh the injury to plaintiffs' First

1 Amendment rights where the provisions do not bear a close
2 relationship to curing the asserted evil of political corrup-
3 tion. Finally, in affirming First Amendment principles, grant-
4 ing the injunction is in the public interest.

5 For the foregoing reasons, IT IS HEREBY ORDERED that
6 plaintiffs' motion for preliminary injunction is granted as
7 follows:

8 1) Defendant is enjoined from enforcing California
9 Government Code sections 85200, 85201, 85202 and 85304 to the
10 extent that those provisions prohibit transfers of funds between
11 one candidate's separate committees.

12 2) Defendant is further enjoined from enforcing the
13 provisions of California Government Code section 85306 as to
14 those funds that were raised prior to January 1, 1989 in amounts
15 within the overall contribution limits contained in Proposition
16 73, California Government Code sections 85100, et seq.

17 3) Finally, enforcement of section 85301(a) is also
18 enjoined to the extent that it is interpreted by regulation to
19 interfere with a union's or ^{membership} ~~non-profit~~ organization's communica-
20 tions with its members.

21 IT IS SO ORDERED.

22 DATED: 5-19/89

23 Lawrence K. Karlton
24 LAWRENCE K. KARLTON
25 Chief Judge
26 United States District Court

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SCOTT HALLABRIN
KATHERINE DONOVAN
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, California 95814

An additional copy of the ORDER was transmitted by telefax to the Fair Political Practices Commission in Sacramento at approximately 11:30 a.m. on this date, directed to the attention of Mr. Hallabrin and Ms. Donovan.

Nancy L. Russell
NANCY L. RUSSELL



FILED
JUL 18 1989
RECORDED

June 26, 1989

Kevin Braaten-Moen
Fair Political Practices Commission
POB 807
Sacramento CA 95804-0807

Dear Kevin:

This letter confirms our conversation of June 2, 1989 in regard to the ruling in Service Employees International Union vs. Fair Political Practices Commission.

I understand the new process you described to me to include:

1. On or before June 30, 1989, review the total amount of money in the restricted account.
2. Review the (former) Committee's records of contributions received. Start with the last contribution received and work backward.
3. If the contribution was \$1,000 or less from a person or company, it is totally transferable to the present Committee's campaign account.
4. If the contribution was more than \$1,000, then a maximum of \$1,000 could be transferred to the campaign account and the balance of that contribution would remain in the restricted account.
5. The process would continue until the total amount in the restricted account had been reviewed.

In our subsequent conversation today, I asked you how to report this process. My understanding is that any money transferred to the campaign account via this process should be reported on Form 490, Summary Page, as "Cash on hand at the beginning of this period." I also understand that adequate documentation should be kept in the event of a challenge to the process.

Kevin, I appreciate your assistance in this ever-changing area of the law. If I have misstated any part of the process, please call me at (714) 425-0111.

Sincerely yours,

A handwritten signature in cursive script that reads "Betsy Starbuck".

BETSY STARBUCK

bc: Larry Walker
Jim Garbo
Rober Melanson

DOCUMENTATION LIST
for
TRANSFER OF FUNDS
from
RESTRICTED ACCOUNT
to
CAMPAIGN ACCOUNT
(per FPPC)

JUL 18 1989

DONOR	DATE of DONATION	AMT. of DONATION	To REST. ACCOUNT	To CAMP. ACCOUNT
Dennis & Su Hansberger	8-12-88	1,000		1,000
Leon Ohanesian	6-10-88	1,000		1,000
DeVere Anderson	6-09-88	1,000		1,000
Jack Turner, M.D.	6-08-88	1,500	500	1,000
Leon Arnone	6-08-88	1,000		1,000
Ed Badalian	6-08-88	1,000		1,000
Harold & Dorothy Courtney	6-08-88	100		100
Jose Ghibaudo	6-07-88	1,000		1,000
Lou Wolfsheimer	6-03-88	1,000		1,000
Affiliated Cities Apartment Assn.	5-31-88	280		280
Muncy Company	5-14-88	280		280
S.B. & Riv. Counties Disposal Assn.	5-12-88	500		500
Anden Group	5-11-88	1,400	400	1,000
William D. Lusk/Lusk Company	5-11-88	140		140
Jim & Jody Poulos/Pann's Restaurant	5-06-88	1,000		1,000
Lockheed Air Services	5-05-88	280		280
Jimmy Gutierrez	4-30-88	560		560
Howard Ambulance Co. Inc.	4-30-88	420		420
Mackey Investigation	4-30-88	140		140
Earl & Carolyn Owens	4-30-88	140		140
Mauray & Camille Panza	4-30-88	100		100
Rancho Monte Vista Mobile Home Park	4-30-88	280		280
Remedy Temp	4-30-88	700		700
Steven & Jennifer Rice	4-30-88	420		420
Robertson's Ready Mix, Inc.	4-30-88	1,400	400	1,000
S.B. County Central Credit Union	4-30-88	560		560
Schaefer Ambulance	4-30-88	280		280
Upland Masonry	4-30-88	280		280
Valley Medical Transport, Inc.	4-30-88	250		250
Pacific Enterprises PAC	4-30-88	250		250
United Domestic Workers PAC	4-30-88	700		700
Raymond & Leslie Medina	4-29-88	280		280
Letitia Hoadley	4-29-88	140		140
Retail Clerks Union, Local 1428	4-28-88	280		280
Malins Pool & Spa Supply	4-28-88	100		100
Ronnie & Joan McBryde	4-28-88	140		140

Inland Valley Property & Investments	4-28-88	150	150
S.B. County Firefighters, Local 935	4-28-88	560	560
Shea Homes	4-28-88	*560	*40
		<hr/>	
		20,170	1,300
			18,350
			<hr/>
			19,650

EXPLANATION: The figure of \$19,650 was the balance in the Restricted Account on 6-29-88. The FPPC process starts with the last donation received by the former committee, the Larry Walker Supervisor Committee, which in this case was a \$1,000 from Dennis & Su Hansberger on 8-12-88. Working backward, the goal is to account for the total (\$19,650) in the Restricted Account. The asterisk (*) by the Shea Homes donation indicates that their total donation was \$560, but only \$40 could be transferred so as not to exceed the balance in the Restricted Account. When added together, the amount retained in the Restricted Account (\$1,300) and the amount transferred to the Campaign Account because of this process (\$18,350) total \$19,650.



California Fair Political Practices Commission

July 21, 1989

Betsy Starbuck
Friends of Larry Walker
P.O. Box 968
Chino, CA 91708-0968

Re: Letter No. 89-423

Dear Ms. Starbuck:

Your letter requesting advice under the Political Reform Act was received on July 18, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5662.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to the information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Jeanne Pritchard
Chief Technical Assistance
and Analysis Division

JP:plh